



WASHINGTON STATE LIQUOR CONTROL BOARD

Notice of Proposed Rule Making #04-20

The Washington State Liquor Control Board would like your input on the attached proposed rules regarding **payment of state beer and wine taxes**.

This rule making is filed with the Office of the Code Reviser in Washington State Register number 04-16-123 (<http://slc.leg.wa.gov/wsr/register.htm>).

What Changes are the Liquor Control Board Considering?

Changes to chapter 314-19 WAC, which outlines the process for payment of state beer and wine taxes, are needed to:

- Clarify language in the rules, and in some places add more detail, for issues that cause confusion.
- Implement Substitute Senate Bill 6655, passed during the 2004 legislative session, which will take effect on January 1, 2005. The law change will allow an authorized representative of an out-of-state brewery or winery to ship beer and wine into Washington State for resale. Currently only the actual brewery or winery may ship beer or wine into Washington for resale. The law will require persons who ship foreign-produced beer or wine into Washington for resale to get a Certificate of Approval license, just like suppliers of U.S. product.

Public Comment

The Board encourages you to comment on the proposed rules. You may attend the public hearing listed below, or forward your comments to the Board by **October 15, 2004**.

By mail: Rules Coordinator
Liquor Control Board
PO Box 43080
Olympia WA 98504-3080

By e-mail:
rules@liq.wa.gov

By fax:
360-704-4921

Public hearing: **October 6, 2004**
9 a.m.
Washington State Liquor Control Board
Board Room
3000 Pacific Ave SE, Olympia

Questions?

If you have any questions, please contact Teresa Berntsen, Rules Coordinator, at 360-664-1648 or by e-mail at rules@liq.wa.gov

September 3, 2004

Proposed Rules

AMENDATORY SECTION (Amending WSR 00-17-065, filed 8/9/00, effective 9/9/00)

WAC 314-19-005 What is the purpose of chapter 314-19 WAC? The purpose of this chapter is to outline the beer and wine tax reporting and payment requirements for the following liquor licensees:

Type of liquor license	Laws that outline tax rates and requirements
(a) Washington beer and/or wine distributor	RCWs 66.24.210, 66.24.230, 66.24.290, 66.24.305
(b) Washington beer and/or wine importer	RCW 66.24.230
(c) domestic brewery	RCWs 66.24.270, 66.24.290, 66.24.305
(d) domestic brewery/brand owner	RCWs 66.24.270, 66.24.290, 66.24.305
(e) microbrewery	RCWs 66.24.270, 66.24.290, 66.24.305
(f) domestic winery	RCWs 66.24.210, 66.24.215, 66.24.230, 66.24.305
(g) public house	RCW 66.24.290, 66.24.580
(h) beer certificate of approval holder	RCW 66.24.270
(i) wine certificate of approval holder	RCWs 66.24.210, 66.24.206
<u>(j) authorized representative certificate of approval holder-- U.S. produced beer</u>	<u>RCWs 66.04.010, 66.24.261, 66.24.270</u>
<u>(k) authorized representative certificate of approval holder-- foreign produced beer</u>	<u>RCWs 66.04.010, 66.24.261, 66.24.270</u>
<u>(l) authorized representative certificate of approval holder-- U.S. produced wine</u>	<u>RCWs 66.04.010, 66.24.203, 66.24.206</u>

<u>(m) authorized representative</u> <u>certificate of approval holder--</u> <u>foreign produced wine</u>	<u>RCWs 66.04.010, 66.24.203,</u> <u>66.24.206</u>
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AMENDATORY SECTION (Amending WSR 00-17-065, filed 8/9/00, effective 9/9/00)

WAC 314-19-015 What are the monthly reporting and tax payment requirements? (1) The required monthly beer and/or wine tax reports must be:

(a) on a form furnished by the board or in a format approved by the board;

(b) filed every month, including months with no activity or taxes due; ~~((and))~~

(c) submitted, with the tax due, to the board on or before the twentieth day of each month, for the previous month (for example, a report listing transactions for the month of January is due by February 20). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day~~((=))~~; and

(d) filed separately for each type of liquor license that the licensee holds.

Type of licensee	Tax Payment Requirements
(2) Washington beer and/or wine distributor	<p>(a) Distributors must pay taxes on all beer and/or wine received during the preceding calendar month, including samples received at no charge <u>(see WAC 314-64-080 and WAC 314-64-090 for more information)</u>. The total tax due (per barrel for beer and per liter for wine) is to be paid by the first distributor to receive the product and must be included with the monthly report.</p> <p>(b) Distributors do not pay taxes on beer and/or wine received from another in-state licensed distributor who has already paid the Washington State tax on the product.</p>

(c) Distributors may claim a tax refund or credit, provided that they have paid the taxes prior to claiming the credit, for the following (see WAC 314-19-030 for information on claiming a tax refund or credit):

(i) shipments exported directly to a point outside the state of Washington, including sales to interstate common carriers;

(ii) sales to any military reservation in Washington State;

~~((iii) samples on which the tax has already been paid; and)~~

~~((iv))~~ (iii) product that is deemed unsalable due to freight damage, product quality, or other causes that occurred prior to receipt by the distributor, subject to the following conditions:

(A) the unsalable product must be destroyed within the state of Washington (per RCW 66.24.305);

(B) the licensee must notify their local liquor enforcement officer in advance for destruction of more than fifty cases of wine or two hundred cases of beer;

(C) the licensee must report the destroyed product on the next required monthly report; ~~((and))~~

(D) the licensee must keep records showing the reason for the destruction and an inventory of products destroyed. These records must be kept on the licensed premises and available for inspection by board employees for a period of two years ~~((=))~~; and

(E) the licensee must provide documentation from the freight company with the report if they are claiming a credit due to freight damage.

<p>(3) Washington beer and/or wine importers</p>	<p>Importers must pay taxes on samples received during the preceding calendar month, as follows:</p> <p>(a) If the samples are used by the importer within the state of Washington, the importer must pay the tax.</p> <p>(b) If samples are provided to a distributor ((for use by the distributor)), the distributor must pay the tax.</p>
<p>(4) Domestic breweries, ((domestic brewery/brand owner,)) microbreweries, and domestic wineries</p>	<p><u>(a) Domestic breweries, microbreweries, and domestic wineries must list production for the current month only. The brewery that the domestic brewery/brand owner contracts with is required to include any products they produce for the brand owner in their production count.</u></p> <p>((a)) <u>(b)</u> Domestic breweries, ((domestic breweries/brand owners,)) microbreweries, and domestic wineries must pay taxes on beer and/or wine that is:</p> <p>(i) sold at retail on the licensed premises (or <u>shipped to</u> additional winery locations as authorized by RCW 66.24.170(4)), including retail sales to out-of-state residents;</p> <p>(ii) sold to retail licensees;</p> <p>(iii) furnished as samples to <u>retail licensees as authorized by RCW 66.28.040, ((and)) WAC 314-64-080, and WAC 314-64-090 (does not include samples provided to distributors);</u></p> <p>(iv) provided as donations to <u>qualifying 501(c)(3) non-profit organizations((,)) per RCW 66.28.040((,)) or to the Washington wine commission per RCW 66.12.180 and RCW 66.24.210;</u> ((and))</p> <p>(v) received via an inter-plant transfer if used as outlined in above subsections (i), (ii), (iii), or (iv) ((,)); <u>or</u></p> <p>(vi) <u>sold at farmers markets as authorized by RCWs 66.24.170(5), 66.24.240(4) and/or</u></p>

	<p><u>66.24.244(5).</u></p> <p>((b)) <u>(c)</u> Domestic breweries, ((domestic breweries/brand owners,)) microbreweries, and domestic wineries do not pay tax on beer and/or wine that is:</p> <p>(i) sold to distributors;</p> <p>(ii) shipped out of a particular location for an inter-plant transfer;</p> <p>(iii) exported directly to a point outside the state of Washington, including sales to interstate common carriers;</p> <p>(iv) sold to the Washington State liquor control board;</p> <p>(v) sold to any military reservation in Washington State; or</p> <p>(vi) provided as a tasting on the brewery or winery premises or at additional winery locations <u>at no charge</u>, as authorized by RCW 66.24.170(4). See WAC 314-19-010(3) for the definition of "tastings."</p>
<p><u>(5) Domestic brewery--brand owners</u></p>	<p><u>(a) Domestic brewery-brand owners must file a report showing the quantity of all beer sold or delivered to each licensed beer distributor, or beer exported directly to a point outside the state of Washington, during the preceding month.</u></p> <p><u>(b) Domestic brewery-brand owners are not responsible for the tax on beer that is contract produced.</u></p>

<p>((5)) <u>(6)</u> Out-of-state beer and/or wine certificate of approval holders</p>	<p>(a) Certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, <u>including samples</u>, during the preceding month.</p> <p>(b) Tax is due from the certificate of approval holder only on samples shipped to licensed agents, directly to retailers((7)) <u>per WAC 314-64-080 and WAC 314-64-090, donations to the Washington wine commission per RCW 66.12.180 and RCW 66.24.210 or to 501(c)(3) non-profit charitable associations within Washington State per RCW 66.28.040.</u> ((See WAC 314-64-080 for information on providing samples. See RCW 66.28.040 regarding donations to nonprofit charitable associations.))</p>
<p><u>(7) Authorized representative certificate of approval holders- US and/or foreign produced beer or wine</u></p>	<p><u>(a) Authorized representative certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples. They must list the brewery and/or winery that they represent and that had shipments into Washington State during the preceding month.</u></p> <p><u>(b) Tax is due from the authorized representative beer and/or wine certificate of approval holders only on samples shipped to licensed agents, directly to retailers per WAC 314-64-080 and WAC 314-64-090, donations to the Washington wine commission per RCW 66.12.180 and RCW 66.24.210, or to 501(c)(3) non-profit charitable associations within Washington State per RCW 66.28.040.</u></p>
<p>((6)) <u>(8)</u> Public House licensees</p>	<p>Public house licensees must pay taxes on all sales of their own product during the preceding calendar month.</p>

AMENDATORY SECTION (Amending WSR 00-17-065, filed 8/9/00, effective 9/9/00)

WAC 314-19-020 What if a licensee doesn't report or pay the taxes due, or reports or pays late? The board may take the following actions against a ~~((domestic brewery, domestic brewery/brand owner, microbrewery, domestic winery, beer/wine distributor, beer/wine importer, public house licensee, or beer/wine certificate of approval holder))~~ licensee in order to collect any of the reports or taxes due that are outlined in this title.

(1) Suspension or revocation of license	(a) Failure to make a report and/or pay the taxes in the manner and dates outlined in this chapter will be sufficient ground for the board to suspend or revoke a liquor license or certificate of approval (per RCW 66.08.150, RCW 66.24.010, RCW 66.24.120, <u>RCW 66.24.206</u> , and <u>RCW 66.24.270</u>). (b) The suspension will remain in effect until all missing reports and/or taxes have been filed with the board (see WAC 314-19-010(1) for the definition of "missing").
(2) Penalties	A penalty <u>of two percent per month</u> will be assessed on any tax payments postmarked after the twentieth day of the month following the month of sale (per the reporting requirements outlined in WAC 314-19-015, RCW 66.24.290, and RCW 66.24.210). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

<p>(3) Surety bond requirements</p>	<p>(a) What is a surety bond? A "surety bond" is a type of insurance policy that guarantees beer and/or wine tax payment to the state. The surety bond must be:</p> <ul style="list-style-type: none"> (i) executed by a surety company authorized to do business in the state of Washington; (ii) on a form and in an amount acceptable to the board; (iii) payable to the Washington state liquor control board; and (iv) conditioned that the licensee will pay the taxes and penalties levied by RCW 66.24.210 and/or RCW 66.24.290. (v) As an option to obtaining a surety bond, a licensee may create an assignment of savings account for the board in the same amount as required for a surety bond. Requests for this option must be submitted in writing to the board's financial division. <p>(b) When will the board require a surety bond? If any of the following occur at one or more licensed locations, the board will require the licensee to obtain a surety bond or assignment of savings account for each licensed location, within twenty-one days:</p> <ul style="list-style-type: none"> (i) a report or tax payment is missing, as defined in WAC 314-19-010(1), for two or more consecutive months; or (ii) a report or tax payment is missing, as defined in WAC 314-19-010(1), two or more times within a two year period. <p>(c) What will happen if the licensee does not acquire the surety bond or savings account? Failure to meet the bonding or savings account requirements outlined in subsections (a) and (b) of this rule may result in immediate suspension of license privileges until all missing reports are filed and late taxes have been paid <u>and the surety bond is acquired or the savings account is established.</u></p>
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(d) In what amount and for how long will the board require a surety bond? The amount of a surety bond or savings account required by this chapter must be either \$3,000, or the total of the highest four months' worth of tax liability for the previous twelve month period, whichever is greater.

(i) the licensee must maintain the bond for at least two years. After the two year period the licensee may request an exemption as outlined in subsection (f) of this rule.

~~((iii))~~ (ii) Surety bond and savings account amounts will be reviewed annually and compared to the last twelve months' tax liability of the licensee. If the current bond or savings account amount does not meet the requirements outlined in this section, the licensee will be required to increase the bond amount or amount on deposit within twenty-one days.

(e) What action will the board take when a licensee holds a surety bond and does not pay taxes due or pays late? If a licensee holds a surety bond or savings account, the board will immediately start the process to collect overdue taxes from the surety company or assigned account. If the exact amount of taxes due is not known due to missing reports, the board will estimate the taxes due based on previous production, receipts, and/or sales.

(f) Can a licensee request an exemption to the surety bond or savings account requirement? A licensee may make a written request to the board's financial division for an exemption from the surety bond or assignment of savings account requirements. The board will grant an exemption once the following criteria are met for each of the requesting licensee's locations:

	<p>(i) The licensee has filed reports and paid applicable taxes to the board for at least two years immediately prior to the exemption request; and</p> <p>(ii) there have been no late or missing reports or tax payments during the previous two years.</p> <p>(iii) In order to remain exempt from the surety bond or assignment of savings account requirements, the licensee must continue to meet the tax reporting and payment requirements outlined in this title (outlined in WAC 314-19-015, RCW 66.24.206, RCW 66.24.210, RCW 66.24.270, RCW 66.24.290, and RCW 66.24.580).</p>
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AMENDATORY SECTION (Amending WSR 00-17-065, filed 8/9/00, effective 9/9/00)

WAC 314-19-030 How can a licensee claim a credit or refund for tax-paid product?

(1) How to claim a tax credit	(2) How to claim a tax refund
<p>(a) On the next monthly report, show the amount of product for which a tax credit is due in the appropriate section(s) of the form.</p> <p>(b) Deduct the total credit from the total amount due on this report.</p>	<p>(a) A licensee may request a refund, rather than claim a credit, if ((no tax is due on the next required report)) <u>the amount of the credit is too large to be used in a reasonable amount of time or the licensee has discontinued business.</u></p> <p>(b) On the next monthly report, the licensee must show the amount of product for which a tax refund is due in the appropriate section(s) of the form.</p> <p>(c) The board will not issue a refund check until the total amount to be refunded accumulates to at least ten dollars.</p>

AMENDATORY SECTION (Amending WSR 00-17-065, filed 8/9/00, effective 9/9/00)

WAC 314-19-035 Reduced tax rate for beer. (1) The additional beer taxes imposed under RCW 66.24.290(3)(a) do not apply to the first sixty thousand barrels of beer sold by a brewery in Washington each fiscal year, if:

(a) the beer is produced in the United States; and

(b) the producing brewery or domestic brewery-brand owner meets the qualifications of 26 U.S.C. Sec. 5051 (a)(2).

(2) In order to qualify for this exemption, the Washington brewer or the out-of-state beer certificate of approval holder must provide the board a copy of an (~~Bureau of Alcohol, Tobacco and Firearms~~) Alcohol and Tobacco Tax and Trade Bureau (TTB) acknowledged copy of their filing "Notice of Brewer to Pay Reduced Rate of Tax" for the calendar year ((+))as required under 27 C.F.R. Sec. 25.167~~((+))~~; a variance for any year that waives annual submission to the TTB; or the Brewer's Notice which waives annual submission to the TTB.

(3) The tax exemption will not apply until the first day of the second month following the month the notice is received (for example, if the notice is received by the Board on January 10, the tax exemption will start on March 1).

(4) How will the distributor know what tax rate to pay for each brewery's products?

(a) The board will provide distributors a list of breweries that qualify for the reduced tax rate; and

(b) The qualifying brewery is responsible to inform the distributors when product sold to distributors exceeds the first sixty thousand barrels exempted from the additional tax.

(c) Once a qualifying brewery's sales to distributors exceeds sixty thousand barrels, the distributors must begin paying the full tax rate on their next monthly tax report.

(5) Per RCW 66.24.290, authorized representative certificate of approval holders do not qualify for the reduced rate in Washington State.

AMENDATORY SECTION (Amending WSR 00-17-065, filed 8/9/00, effective 9/9/00)

WAC 314-19-040 Is there any exception to the additional tax imposed on fortified wine? (1) RCW 66.24.210(4) imposes an additional tax on fortified wine. RCW 66.04.010(~~((37))~~) (38) defines "fortified wine" as wine that has an alcohol content greater than fourteen percent of alcohol by volume, and outlines exceptions for when wine can be over fourteen percent alcohol by volume and not be considered "fortified."

(2) In order to not pay the additional tax on fortified wine that falls under one of the exceptions in RCW 66.04.010(~~((34))~~) (38), a manufacturer, importer, ~~((or))~~ distributor, or authorized representative who holds a certificate of approval license must file an affidavit of exception on a form prescribed by the board.

(a) The form must be submitted to the board's licensing and regulation division.

(b) The board will only exempt payments owed and/or submitted after the affidavit is on file with the board. Tax payments owed and/or submitted prior to the board receiving the affidavit will not be adjusted.

(c) The licensee who files the affidavit is responsible for the information it contains. Any affidavit which the board finds to contain false information may result in suspension of label and product approval for the wine products that are the subject of the affidavit, for not less than one year.